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Letter dated 1 August 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Switzerland submitted pursuant to resolution 1624 (2005).

I would be grateful if you could arrange for this letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 28 July 2006 from the Permanent Representative of Switzerland to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: French]

With reference to your letter of 15 May 2006, I have the honour to transmit to you herewith my Government's replies to the questions from the Counter-Terrorism Committee concerning the implementation of resolution 1624 (2005) (see enclosure).

(*Signed*) Peter **Maurer**
Ambassador

Enclosure

Replies to the questions of 15 May 2006 concerning the implementation of Security Council resolution 1624 (2005) concerning additional measures to combat terrorism submitted to the Counter-Terrorism Committee on 28 July 2006

In italics: extracts from the letter of 15 May 2006 from the Chairman of the Counter-Terrorism Committee (CTC)

Paragraph 1

1.1 What measures does Switzerland have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Where a clearly identifiable person or group is incited to commit a terrorist act, the charge of incitement (article 24 of the Swiss Penal Code) may be considered as a form of complicity in the commission of a crime. A person who knowingly incites another to commit an offence such as a terrorist act is punishable under article 24 of the Swiss Penal Code. The predicate offence must constitute at least a separate offence. It is immaterial whether there is a clearly identified victim or conduct.

For there to be an offence, it is not necessary for the perpetrator to have carried out or to have even started carrying out the inchoate offence (terrorist act). Under article 24, paragraph 2, of the Penal Code, any attempt to incite the commission of a terrorist act is punishable in all circumstances.

Public incitement to commit a terrorist act against an unspecified group of persons is punishable under article 259 of the Penal Code (public incitement to commit crime or violence). Under that article, any person who publicly incites others to commit a felony or an offence involving violence, such as a terrorist act, is punishable.

With regard to direct incitement, the inciter must have intended to exert influence regardless of whether his utterance is understood or even simply heard. Such incitement is punishable irrespective of whether a terrorist act was consummated or attempted. Indirect public incitement — incitement that can be inferred from its context and which may not be explicitly aimed at the commission of an act — is also punishable under article 259 of the Penal Code. The incitement must be inherently manifest although the criminal conduct may not be specified. Here again, attempted incitement is punishable even in the absence of a terrorist act.

In this context, reference is also made to article 135 of the Criminal Code under which the representation, through sound or visual recordings, of images, other objects or representations, of acts of cruelty against human beings, is punishable.

On 23 November 2005, the Federal Council extended until 31 December 2008 the ban on the Al-Qaida terrorist group as well as the Order of 7 November 2001 concerning the extension of the duty to inform and right to report to the relevant authorities, agencies and organizations responsible for internal and external security. All the activities of Al-Qaida are banned as are any propaganda activities aimed at inciting violence in support of Al-Qaida. The ban also extends to Al-Qaida cover

and affiliated groups and to groups whose leaders, goals and means are identical to those of Al-Qaida or who act at its direction.

1.2 What measures does Switzerland take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

Switzerland directly applies the exclusion clauses under article 1F of the Convention relating to the Status of Refugees adopted on 28 July 1951 or, alternatively, the provision on ineligible asylum seekers and refugees of article 53 of the Swiss Federal Act on Asylum in reviewing individual applications for asylum where the legal requirements are met.

Paragraph 2

1.3 How does Switzerland cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering its territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing screening and passenger security procedures?

On 1 January 2003 Switzerland introduced a new tamper-proof passport. New security features have also been incorporated into the identity cards. The new passport represents a major step against forgery. No successful forgeries have been uncovered to date. Switzerland will also introduce, as of 4 September 2006, a biometric passport as part of a pilot project as a further measure in its effort to combat fraudulent identity documents.

Swiss border control personnel receive multifaceted training on travel documents and possible forgeries. In carrying out such controls, field agents have permanent online access to a central photo and documentation data bank containing the description of authentic passports. Such database (ARKILA) is constantly upgraded and updated as part of ongoing collaboration with other States. In addition, an update on new developments relating inter alia to identity documents and methods of forgery is issued periodically and disseminated to the appropriate agencies.

Since 11 September, the World Customs Organization (WCO) has been working intensively on the fight against terrorism. Switzerland, a founding member of WCO, is active in the work of various committees. The recently adopted Framework of Standards to Secure and Facilitate Global Trade is an international customs initiative that is considered by the customs authorities as a major counter-terrorism tool.

As a State member of the International Civil Aviation Organization (ICAO), Switzerland has also put in place standards as provided under annex 9 (facilitation) and annex 17 (security). In addition, it has introduced European Communities standards in the area of aviation security. Switzerland already had a high level of security prior to 11 September 2001. Thus, as required by ICAO, it started screening all registered luggage as far back as the summer of 2001. Moreover, as a member of the European Civil Aviation Conference, Switzerland serves on various specialized bodies and is active in efforts to prevent illegal entry and enhance security.

Switzerland may also deny, in the interest of the country's internal security, entry to members of extremist (violent) or terrorist groups or to preachers advocating violence. Denying work permits to foreign theologians may be another tool against violent propaganda.

Lastly, Switzerland's membership of the European Union's Schengen and Dublin Agreements (probably in 2008) will further strengthen internal security through mutual assistance in police and judicial matters. Cooperation under the Schengen Information System will make efforts to deter terrorism and organized crime even more effective.

Paragraph 3

1.4 What international efforts is Switzerland participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

Generally, Switzerland, which is home to several linguistic and religious cultures, greatly values the peaceful coexistence of peoples as a foreign policy principle enshrined in its Constitution. It therefore views promoting the integration of foreigners living in Switzerland as a paramount goal. Integration is a two-way process which requires that aliens be willing to integrate and that the natives be open to immigration. It aims at enhancing mutual understanding among Swiss citizens and aliens and therefore coexistence on the basis of constitutional values and mutual respect and tolerance. Its goal is thus to ensure equal access to social and economic resources. Switzerland sets aside funds for the promotion of integration (article 25 (a) of the Federal Act on the stay and establishment of aliens). Integration is also the main thrust of the ongoing amendment of the Aliens Act (the new Aliens Act will be submitted to a popular vote in September 2006).

At the international level, Switzerland has participated in the activities of the Global Agenda for Dialogue among Civilizations and joined the group of friends of the Alliance of Civilizations. It has also offered to contribute actively to the deliberations of the High-Level Group of the Alliance (see statement item 42/20.10.2005).

Security Council resolution 1624 (2005) calls upon Member States "to continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures". This appeal transcends efforts to counter terrorism and broadly addresses the risk of mistrust among civilizations and cultures, which could sow the seeds of terrorism. To promote greater understanding between civilizations and dispel mutual mistrust, Switzerland has launched practical dialogue and cooperation initiatives between Western governments and major civil society stakeholders, including in western Asia, such as "Towards Cooperation in Removing Unjustified Obstacles for Islamic Charities" (Montreux Initiative), which aims at improving the working conditions of bona fide charities which may face problems arising from the unintended consequences of some counter-terrorism actions. Switzerland has also started discussions with other interested countries on how to better reflect the concerns of faith-based political stakeholders in foreign policy.

It is in the same spirit that Switzerland has been active in seeking ways to improve the compilation and review of lists of groups and individuals with links to terrorism. Switzerland holds the view that verifiable and transparent procedures should be put in place lest the gap between western governments and segments of civil society in western Asia and North Africa widen.

It is also in a spirit of mutual recognition and respect of cultures and civilizations that Switzerland became a member of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research in 2004. The duty to remember and a deeper understanding of the Holocaust help to comprehend, if not to anticipate, the mechanisms behind the targeting of religions and cultures. Switzerland participates regularly in the activities of the Organization for Security and Cooperation in Europe to combat racism, xenophobia, intolerance and anti-Semitism and to foster intercultural, inter-ethnic and interreligious understanding. Switzerland also joined in sponsoring the General Assembly resolution designating an International Day of Commemoration in memory of the victims of the Holocaust (A/60/L.12).

By adopting measures against propaganda inciting violence in general and against Islamic preachers of hatred in particular (see 1.5 below), Switzerland supports interfaith and intercultural peace in Swiss society and contributes to the dialogue among cultures and mutual understanding.

Lastly, Switzerland supports many programmes for the prevention of conflicts and promotion of peace, which also promote efforts conducive to broadening understanding among civilizations.

1.5 What steps is Switzerland taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

The criminal statute against racial discrimination, which has been in force since 1 January 1995, plays a key role in punishing any person who publicly incites hatred or discrimination against a person or group of persons on racial, ethnic or religious grounds (article 261 bis, paragraph 1, of the Penal Code) to a term of imprisonment or a fine. The International Convention on the Elimination of All Forms of Racial Discrimination, which was concluded on 21 December 1965 and has been implemented in our country since it entered into force in Switzerland on 29 December 1994, complements that statute.

Switzerland is of the view that punishment alone is not enough and that further punitive action should be taken in order to detect, at a very early stage, expressions of racism and intolerance that foster extremism and terrorism in our country. The establishment of the Focal Point for the Fight against Racism has enabled Switzerland to not only dispense advice but also to promote networking among counselling and referral agencies for the victims of racism. Between 2001 and 2005, the Focal Point invested 13 million francs in the fight against racism and the promotion of human rights by funding over 100 projects implemented in Switzerland. As from 2006, 1.1 million francs will be earmarked each year for funding such projects. Mention should also be made of the national research programme on "Religions, the State and Society" launched in the spring of 2006 by the Swiss National Science Foundation under a mandate of the Federal Council. The

programme's goal is to achieve a better understanding of the interactions between religion, culture and the State.

Pursuant to the Federal Act of 21 March 1997 on the maintenance of national internal security, Switzerland takes proactive measures to identify the dangers posed to the country by (violent) extremism and terrorism. In accordance with the Order of 27 June 2001 on the maintenance of internal security, (violent) extremism covers actions of individuals who reject democracy, human rights or the rule of law and seek to achieve their goals by engaging in, approving of or promoting acts of violence. Violent propaganda, which advocates extremist violence or terrorism, is also covered by this Order.

Preventive action against propaganda that incites violence includes, within the meaning of the Act on the maintenance of national internal security, periodic threat assessment, processing of related information and security checks on those who engage or may engage in such propaganda. Currently, information on violent propaganda may be gathered through publicly accessible sources, private communications, government communications or the monitoring of public places. The ongoing review of the Act on the maintenance of national security would allow the collection of more information and the preventive confiscation of propaganda material inciting violent extremism.

Where necessary, foreign theologians may be denied entry into Switzerland or work permits (see also 1.3 above). Furthermore, as mentioned under 1.1, the Order of 7 November 2001 concerning the extension of the duty to inform and right to report to the relevant authorities, agencies and organizations responsible for internal and external security, covers all violent propaganda in support of Al-Qaida.

Paragraph 4

1.6 What is Switzerland doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law, and humanitarian law?

While the State has a duty to protect its citizens against all violent acts and to prosecute the perpetrators of such acts, it must do so in compliance with human rights law, refugee law and humanitarian law as well as with its other commitments under international law (see General Assembly resolution 57/219).

Switzerland is party to many international conventions in these fields, including the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Geneva Conventions for the Protection of Victims of War. The measures described above are subject to certain strict conditions and must comply with such fundamental principles as the prohibition of discrimination or the paramount nature of certain fundamental guarantees. In particular, the State must comply with the principle of due process and the principle of proportionality. In that regard, it should also be noted that Switzerland applies the Council of Europe Guidelines on human rights and the fight against terrorism of 11 July 2002.

All the actions taken to implement Security Council resolution 1624 (2005) are in compliance with the Federal Constitution and Switzerland's international commitments. Article 36 of the Constitution provides that any limitation of a

fundamental right requires a legal basis, must be justified by public interest, must be proportionate to the goals pursued and must not violate the essence of fundamental rights. Any person whose rights are so violated, may seek redress by filing an appeal with the Federal Court and then with the European Court of Human Rights at Strasbourg.

All the organs of the State must comply with and implement the international norms that are binding on Switzerland in their decisions and actions, including in the area of counter-terrorism. In case of a conflict between a norm of international law and a domestic norm, the former will in principle take precedence over the latter as a consequence of the principle that treaties may be applied in good faith. This is an international law obligation which is, ipso facto, part of the internal legal system of Switzerland, which has a monist system of law. Thus, all counter-terrorist legislation must of necessity comply with international law, including human rights law, refugee law and humanitarian law.